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09/726,009	11/29/2000	Leland James Wiesehuegel	AUS9-2000-0738-US1	9657

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IBM CORPORATION (RHF)
C/O ROBERT H. FRANTZ
P. O. BOX 23324
OKLAHOMA CITY, OK 73123

EXAMINER
GRAHAM, CLEMENT B

ART UNIT	PAPER NUMBER
3692	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *11/29/2000*.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1.   Claims 1-21 remained pending.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 1, 7, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1, 7, recite a sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system said method comprising the steps of and a computer-readable medium containing program code for a sales offering. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claims 1 and 7, are directed to models and steps. Modules and can be interpreted at consisting of software per se, and software is not a patentable subject matter because it is not fall under a statutory class as being a process, machine, manufacture, or composition of matter.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action: (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   The factual inquiries set forth in Graham v. John Deere Co., 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

       1. Determining the scope and contents of the prior art.

       2. Ascertaining the differences between the prior art and the claims at issue.

       3. Resolving the level of ordinary skill in the pertinent art.

       4. Considering objective evidence present in the application indicating obviousness or unobviousness.

6.   Claims 1-21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al(Hereinafter Miller U.S. Patent No: 5, 640, 569) in view of Goldberg et al (Hereinafter Goldberg U. S. Patent 6, 985, 885).

As per claim 1, Miller discloses a sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system, said method comprising the steps of:

providing in a network computer arrangement a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid (See column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67) database querying said computer-readable bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror(See column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67)

preventing transfer of sealed bids from said computer-readable bid repository to a trader responsive to said database query(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

Miller fails to explicitly teach presenting via a computer user interface matching unsealed bids to a trader with whome said Broker Profile Matrix is associated.

However Goldberg discloses executed by the server's CPU. These control programs may be stored in system memory. In a typical implementation, the programs stored in system memory may include: an operating system; a file handling system; a set of user interface procedures, for

handling input from user interface and for displaying output to the user on display; one or more application programs; a security module for securely transmitting and receiving data to and from network display, and/or disk drives and ; an auction control module, discussed in more detail below, for managing an online auction, preferably including modules for transmitting information to bidders; receiving bids; evaluating bids to identify winners and losers; making copies of digital content and transmitting those copies to the winning bidders; obtaining and processing payments from the bidders; recording and analyzing bid distributions; allowing the auctioneer to select the auction mechanism to be used; and responding to auctioneer and/or bidder queries regarding the nature of the auction(see column 6 lines 31-65).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Miller to include teach presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated taught by Goldberg in order to price or sell goods or services using randomized sampling and auction techniques.

As per claim 2, Miller discloses wherein said step of providing a computer-readable bid repository comprises providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 3, Miller discloses wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid status as sealed or unsealed. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 4, Miller discloses wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid seal expiration time (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 5, Miller discloses wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids (see column 2 lines 13-26 and lines 68-67

and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 6, Miller discloses wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises:
providing a bid seal expiration time parameter with each sealed bids; providing a system clock or timer comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive and determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 7, Miller discloses a computer-readable medium containing program code for a sales offering computer system for restricting access by traders to collected online sealed bids in an online offering and bidding system, said program code when executed by a sales offering computer system causes the sales offering computer system to perform the steps of:
providing in a network computer arrangement a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67) database querying said computer-readable bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).
preventing transfer of sealed bids from said computer-readable bid repository to a trader responsive to said database query(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

Miller fails to explicitly teach presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated.

However Goldberg discloses executed by the server's CPU. These control programs may be stored in system memory. In a typical implementation, the programs stored in system memory may include: an operating system; a file handling system; a set of user interface procedures, for handling input from user interface and for displaying output to the user on display; one or more

application programs; a security module for securely transmitting and receiving data to and from network display, and/or disk drives and ; an auction control module, discussed in more detail below, for managing an online auction, preferably including modules for transmitting information to bidders; receiving bids; evaluating bids to identify winners and losers; making copies of digital content and transmitting those copies to the winning bidders; obtaining and processing payments from the bidders; recording and analyzing bid distributions; allowing the auctioneer to select the auction mechanism to be used; and responding to auctioneer and/or bidder queries regarding the nature of the auction.(see column 6 lines 31-65).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Miller to include presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated. taught by Goldberg in order to price or sell goods or services using randomized sampling and auction techniques.

As per claim 8, Miller discloses wherein said program code for providing a computer-readable bid repository comprises program code for providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 9, Miller discloses wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid status as sealed or unsealed. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 10, Miller discloses wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid seal expiration time. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 11, Miller discloses wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 12, Miller discloses wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for causing the sales offering computer system to perform the steps of:
providing a bid seal expiration time parameter with each sealed bids; accessing or reading a system clock or timer (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67) comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive and
determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 13, Miller discloses a sealed bid sales offering system in a computer network, said computer network enabling communications between said sales offering system and trader consoles, said offering system comprising:
a bid database in a network computer arrangement containing collected bids, said database being accessible and queriable by said sales offering system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67)
a database query server communicative to said computer-readable bid database for querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror, a transfer preventor configured to prevent transfer of sealed bids from said computer-readable bid repository to a trader responsive to said database query(see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

Miller fails to explicitly teach Miller fails to explicitly teach presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated.

However Goldberg discloses executed by the server's CPU. These control programs may be stored in system memory. In a typical implementation, the programs stored in system memory may include: an operating system; a file handling system; a set of user interface procedures, for handling input from user interface and for displaying output to the user on display; one or more

application programs; a security module for securely transmitting and receiving data to and from network display, and/or disk drives and ; an auction control module, discussed in more detail below, for managing an online auction, preferably including modules for transmitting information to bidders; receiving bids; evaluating bids to identify winners and losers; making copies of digital content and transmitting those copies to the winning bidders; obtaining and processing payments from the bidders; recording and analyzing bid distributions; allowing the auctioneer to select the auction mechanism to be used; and responding to auctioneer and/or bidder queries regarding the nature of the auction(see column 6 lines 31-65).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Miller to include presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated taught by Goldberg in order to price or sell goods or services using randomized sampling and auction techniques.

As per claim 14, Miller discloses wherein said sales offering system is a computer network server (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 15, Miller discloses wherein said computer network server is an Internet server (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 16, Miller discloses wherein said computer network server is a Hyper Text Transfer Protocol (HTTP) server (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 17, Miller discloses wherein said sales offering system is adapted for communications with trader console computers which are web browser devices. (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 18, Miller discloses wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's location code (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 19, Miller discloses wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's goods category code (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 20, Miller discloses further comprising a restricted access administrator console communicative with said bid database for allowing conversion of sealed bids to unsealed bids (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

As per claim 21, Miller discloses further comprising a system clock or timer for use by said database query server communicative to determine which seals of sealed bids have expired as a criteria for retrieving unsealed bids (see column 2 lines 13-26 and lines 68-67 and column 3 lines 1-2 and column 4-6 lines 1-67).

Conclusion

RESPONSE TO ARGUMENTS

7. response to argument's filed 4/24/08 has been fully considered but they are moot in view of new grounds of rejections.

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to CLEMENT B. GRAHAM whose telephone number is

(571)272-6795. The examiner can normally be reached on 7am to 5pm.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantzy Poinvil/
Primary Examiner, Art Unit 3692

CG

August 2, 2008